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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

PATRICK A. MISSUD et al.,

Plaintiff and Appellant,

v.

D.R. HORTON, INC., et al.,

Defendants and Respondents.

A135531

(City & County of San Francisco  
Super. Ct. No. CPF-10-510876)

Plaintiff Patrick A. Missud appeals from an order denying his motion for attorney fees under Code of Civil Procedure section 1021.5. The present appeal is only the second before this court but is part of a string of litigation against defendants in which plaintiff has been repeatedly sanctioned and declared a vexatious litigant. Plaintiff's briefs in this court are largely incomprehensible and improperly focus on issues far outside the scope of the appeal. As with his prior appeal, plaintiff has again failed to produce an adequate record; the record does not include his moving papers or any evidence submitted in support of his motion for attorney fees. Most importantly, however, plaintiff fails entirely to address the court's primary ground for denying his motion: he is not the prevailing party. Accordingly, we shall affirm the order denying plaintiff's motion for attorney fees.<sup>1</sup>

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<sup>1</sup> Plaintiff's request for judicial notice of a website and the documents found thereon, which allegedly "prove[] that [defendant] does significant business in the Golden State where 38 million Californians reside," is denied on the ground of relevancy.

## **Background**

In July 2010, defendants obtained a monetary judgment against plaintiff in Nevada state court. After defendants filed the Nevada judgment in San Francisco Superior Court, plaintiff moved unsuccessfully to vacate the order enforcing the judgment on the ground that the Nevada ruling was fraudulently procured. In November 2011, the order denying plaintiff's motion to vacate was affirmed on appeal by this court. (*Missud v. D.R. Horton, Inc.* (A131566) Nov. 22, 2011 [nonpub. opn.].) Thereafter, plaintiff apparently filed a motion for attorney fees under Code of Civil Procedure section 1021.5, which the court denied on the grounds that plaintiff "did not prevail in this action and the case did not significantly benefit the general public." Plaintiff filed a timely notice of appeal.<sup>2</sup>

## **Discussion**

Code of Civil Procedure section 1021.5 provides in relevant part, "Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any." The record before this court establishes that plaintiff has yet to prevail in any action against defendants. Accordingly, the order must be affirmed.

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<sup>2</sup> Shortly after filing his notice of appeal, plaintiff filed a motion in the trial court seeking reconsideration of his attorney fees motion. The trial court denied the motion. Although plaintiff purports to appeal from the denial, he has presented no argument directed specifically at the motion for reconsideration or any basis for its reversal. Accordingly, plaintiff has waived any challenge to the order denying his motion for reconsideration. (*Troensegaard v. Silvercrest Industries, Inc.* (1985) 175 Cal.App.3d 218, 228 [error waived because no argument, citation to authorities, or references to record].)

**Disposition**

The order denying plaintiff's motion for attorney fees is affirmed. Defendants shall recover their costs on appeal.

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Pollak, J.

We concur:

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McGuiness, P. J.

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Jenkins, J.